



HM Revenue
& Customs

Legislative changes relating to Real Time Information

Draft secondary legislation for comment

Publication date: 29 November 2013

Closing date for comments: 24 January 2014

Technical note

Background

1. Most employers are now reporting Pay As You Earn (PAYE) information in real time. This means information about tax and other deductions is collected and transmitted to HMRC every time an employee¹ is paid (on or before the date of payment).
2. HMRC has engaged extensively with employers and other interested parties about the design and introduction of Real Time Information (RTI). A pilot was run in 2012/13 and findings from that and ongoing dialogue with employers has led to a number of changes being made to the rules covering PAYE, National Insurance contributions (NICs) and the Construction Industry Scheme (CIS) via secondary legislation. This document presents further draft amendments to:
 - the Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682) (“the PAYE Regulations”)²; [
 - the Social Security (Contributions) Regulations 2001 (SI 2001/1004) (“the NICs Regulations”)³; and
 - the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045) (“the CIS Regulations”)⁴.

HMRC welcomes comments on the draft regulations.

3. RTI changes also extend to the collection of income-contingent student loan repayments, where employers make deductions from the earnings of employed borrowers. HMRC collects repayments through the UK tax system on behalf of the Department for Business, Innovation and Skills (BIS), and is working closely with BIS on amendments that will be required to The Education (Student Loans) (Repayment) Regulations 2009 (SI 2009/470).
4. This note first considers the changes to be made to the PAYE Regulations for direct collection schemes and employers exempt from online filing; it then covers the provisions needed in the PAYE, the NICs and the CIS Regulations to complete the legislation for late filing and late payment

¹ ‘Employee’ includes annuitants, those in receipt of pensions and taxable state benefits.

² As amended by the Income Tax (Pay As You Earn) (Amendment) Regulations 2012 (SI 2012/822); the Income Tax (Pay As You Earn) (Amendment No 2) Regulations 2012 (SI 2012/1895); the Income Tax (Pay As You Earn) (Amendment) Regulations 2013 (SI 2013/521) and the Income Tax (Pay As You Earn) (Amendment No 2) Regulations 2013 (2013/2300).

³ As amended by the Social Security (Contributions) (Amendment No. 3) Regulations 2012 (SI 2012/821).

⁴ As amended by the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2012 (SI 2012/820).

penalties, including a consequential amendment to switch off the current late filing penalty, and a small change to terminology.

Direct Collection Schemes-

5. Regulation 8 of the regulations which amend the PAYE Regulations and the CIS Regulations (the draft PAYE Regulations) amends regulation 141 of the PAYE Regulations to provide for the Direct Collection procedure to apply where HMRC is satisfied that it is not practicable for the employer to deduct tax by reference to the tax tables, for example where an employer has no place of business in the UK, and no special arrangements have been made, unless the employee objects within 30 days of receiving written notification of the Direct Collection procedure.
6. Regulation 9 of the draft PAYE Regulations substitutes a new regulation 142 into the PAYE Regulations so that where the Direct Collection procedure applies, an employee will be required to report receipt of payments of PAYE income under RTI.
7. Regulation 10 of the draft PAYE Regulations makes a consequential amendment to regulation 143 of the PAYE Regulations to reflect the amendment by regulation 12 (see below).
8. Regulation 11 of the draft PAYE Regulations makes a consequential amendment to the definition of “the total tax” in regulation 144 of the PAYE Regulations.
9. Regulation 12 of the draft PAYE Regulations repeals regulations 145 and 146 of the PAYE Regulations. These two regulations required the employee to report when payments ceased (regulation 145) or to report the end of year information (regulation 146). Employees using the Direct Collection procedure will report this information as part of the returns required under RTI.
10. Regulation 13 of the draft PAYE Regulations makes a consequential amendment to reflect that HMRC has directed that some employers are not required to make electronic returns.
11. Regulation 14 of the draft PAYE Regulations makes a consequential amendment to regulation 207 of the PAYE Regulations so that employers who previously had a special arrangement and employees operating Direct Collection schemes are required to file electronically.

Employers exempt from online filing

12. The draft PAYE Regulations and the regulations which amend the NICs Regulations (the draft NICs Regulations) make minor amendments to the RTI reporting requirements for employers exempt from online filing. Regulation 4 of the draft PAYE regulations and regulation 5 of the draft NICs Regulations amend the reporting requirements in regulation 67D of the PAYE Regulations and in paragraph 21D of the NICs Regulations, to provide for those employers who are not required to file using an approved method of electronic communications to deliver quarterly information returns rather than reporting at time of payment to the employee.

Penalties

Late filing penalties

13. Schedule 50 Finance Act 2013 inserted new late filing penalties for RTI returns into Schedule 55 Finance Act 2009 (paragraph 6B – 6D) (FA 2009). The new model provides:
- for one late filing penalty to apply automatically each month or quarter, regardless of the number of RTI returns due from an employer;
 - for an initial unpenalised default each tax year;
 - for a manual tax-gated “extended failure” penalty to apply where a return is outstanding for 3 months or more and the information it would have contained has not been included in a later return; and
 - some flexibility for new employers around applying late filing penalties when they first pay an employee.
14. The legislation includes a number of regulation-making powers. These powers permit regulations to be made to:
- set the size of the late filing penalties (paragraph 6C(7)&(8) Sch 55 FA09);
 - set the length of the “initial period” for new employers (paragraph 6C(5)(b) Sch 55 FA09); and
 - disapply the annual unpenalised default (paragraph 6C(9)).
15. The draft PAYE Regulations which insert new regulations 67I – 67K into the PAYE Regulations (regulation 7) exercise the above powers.
16. Regulation 67I sets the size of the late filing penalties as follows:
- £100 for schemes with 1 – 9 employees;
 - £200 for schemes with 10 – 49 employees;
 - £300 for schemes with 50 – 249 employees; and
 - £400 for schemes with 250 or more employees.
17. Regulation 67J disapplies the annual unpenalised default for annual schemes, and defines an annual scheme for the purposes of this regulation.

18. Regulation 67K sets the initial period for new employers at 30 days. This means that a new employer will not receive a late filing penalty provided he files his first RTI return within 30 days of making his first payment to an employee.

Late payment penalties

19. Schedule 50 Finance Act 2013 also inserted a new paragraph 8A into Schedule 56 Finance Act 2009 which covers late payment penalties. This paragraph provides a power for HMRC to set a “payment tolerance” in regulations. Payments within such a tolerance will not incur a late payment default. This power was included following consultation and is designed to ensure payroll roundings and other minor adjustments do not trigger penalties where the amount paid over does not tally with the amount reported.
20. Regulation 67L sets the payment tolerance at £100. So where an employer pays over a sum that is within £100 of the total shown as due to HMRC from the RTI returns filed for the tax period, no late payment default (or late payment penalty if applicable) will arise.
21. Regulation 15 of the draft PAYE Regulations inserts a new regulation 16A into the Construction Industry Regulations 2005. This regulation is designed to ensure the payment tolerance applies to payments from contractors under CIS-only schemes, as well as to the combined sum due from an employer/contractor operating one payroll scheme to include all the deductions due to HMRC in any tax period.
22. Regulation 3 of the draft NICs Regulations inserts a reference to the new PAYE regulation 67L into the NICs Regulations to ensure the payment tolerance applies to the total sum due from an employer for each scheme each period.
23. Regulation 8 of the draft NICs Regulations inserts a new paragraph 21G into the NICs Regulations. This regulation is designed to ensure the new late filing penalties set out in Schedule 55 Finance Act 2009 for RTI returns also cover Class 1 NICs.

Other changes

24. Regulation 5 of the draft PAYE Regulations and regulation 6 of the draft NICs Regulations amend the terminology used in the PAYE and the NICs Regulations to ensure it is in line with that used in the penalty provisions for inaccurate returns (see Schedule 24 Finance Act 2007).
25. Regulation 6 of the draft PAYE Regulations and regulation 7 of the draft NICs Regulations amend the PAYE and the NICs Regulations to remove the application of the penalty applicable to the last return filed late each year for returns relating to tax year 2014-15 and onwards.

Impacts of these changes

26. An updated Tax Information and Impact Note (TIIN) for RTI was published in March 2013. The TIIN summarises all of the anticipated impacts of RTI, including impacts on individuals, business and HMRC. The draft amendments to regulations now being presented are not expected to have a significant effect on the impacts of RTI. The TIIN is available at <http://www.hmrc.gov.uk/thelibrary/rti-improve-op.pdf>,
27. A TIIN for the penalties was published in March 2013. This TIIN continues to represent HMRC's estimates of the impacts of these penalties. This TIIN is available at insert link <http://www.hmrc.gov.uk/budget2013/tiin-4762.pdf>

Next steps and how to comment

28. The draft Regulations are open for comment until 24 January 2014. All comments should be emailed to: TAP@hmrc.gsi.gov.uk.
29. Information provided in response to this draft legislation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
30. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
31. The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

2014 No. XXXXX

INCOME TAX

**The Income Tax (Pay As You Earn) and the Income Tax
(Construction Industry Scheme) (Amendment) Regulations 2014**

Made - - - -

Laid before the House of Commons

Coming into force - -

6th April 2014

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 98A and 113(1) of the Taxes Management Act 1970(a), section 133 of the Finance Act 1999(b), section 136 of the Finance Act 2002(c) section 684 of the Income Tax (Earnings and Pensions) Act 2003(d) and section 73 of the Finance Act 2004(e) and now exercisable by them(f), and by paragraph 6C(5), (7), (8)(a), (9) and (11) of Schedule 55(g), and by paragraph 6(8A)(a) and (8B) of Schedule 56(h), to the Finance Act 2009.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Pay As You Earn) and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2014 and come into force on 6th April 2014.

(2) Regulations [6 and 7] have effect in relation to a failure to make a return which has a filing date after 5th April 2014.

-
- (a) 1970 c. 9. Section 98A was inserted by section 165 of the Finance Act 1989 (c. 26) and has been relevantly amended by paragraph 138 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1) and paragraph 29(a) of Schedule 24 to the Finance Act 2007 (c. 11).
- (b) 1999 c. 16.
- (c) 2002 c. 23.
- (d) 2003 c. 1. Section 684 has been relevantly amended by section 145 of the Finance Act 2003 (c. 14), paragraphs 102(2) and 117 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11) ("CRCA"), section 94(3) of the Finance Act 2006 (c. 25), by paragraphs 2 to 7 of Schedule 58 to the Finance Act 2009 (c. 10) and by section 225 of the Finance Act 2012 (c. 14).
- (e) 2004 c. 12.
- (f) The powers of the Board of Inland Revenue under section 684 of the Income Tax (Earnings and Pensions) Act 2003 were transferred to the Commissioners for Revenue and Customs by paragraph 102(2) of Schedule 4 to CRCA. The functions of the Board of Inland Revenue under section 113(1) of the Taxes Management Act 1970, section 133 of the Finance Act 1999 and sections 135 and 136 of the Finance Act 2002 were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of CRCA. Section 50(1) of that Act provides that, in so far as appropriate, in consequence of section 5 a reference in an enactment, instrument or other document to the Commissioners of Inland Revenue (however expressed) shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (g) 2009 c. 10. Paragraph 6C of Schedule 55 to the Finance Act 2009 was inserted by paragraph 6 of Schedule 50 to the Finance Act 2013 (c. 29).
- (h) Sub-paragraphs 6(8A) and 6(8B) of Schedule 56 to the Finance Act 2009 were inserted by paragraph 12(6) of Schedule 50 to the Finance Act 2013.

PART 1

Amendment of the Income Tax (Pay As You Earn) Regulations 2003

2. The Income Tax (Pay As You Earn) Regulations 2003(a) are amended as provided for in regulations 3 to 14.

3. In regulation 2(1) (interpretation) in the definition of “deductions working sheet” omit paragraph (b).

4. In regulation 67D (exceptions to regulation 67B)(b)—

(a) at the end of paragraph (1) insert—

“But this is subject to paragraph (2B).”;

(b) after paragraph (2A) insert—

“(2B) This regulation does not apply if a Real Time Information employer within paragraph (1) makes a return using an approved method of electronic communications.”; and

(c) in paragraphs (3), (5) and (6) for “month”, wherever it occurs, substitute “quarter”.

5. In regulation 67E (returns under regulations 67B and 67D: amendments)(c)—

(a) in paragraph (1) for “an employer discovers an error in a return” substitute “there is an inaccuracy in a return, whether careless or deliberate.”;

(b) in paragraphs (2) to (4) and (8)(a) for “error” substitute “inaccuracy”;

(c) for paragraph (5) substitute—

“(5) When the employer becomes aware of an inaccuracy in a return submitted under regulation 67B or 67D, the employer must provide the correct information in the next return for the tax year in question.”; and

(d) in paragraph (7)(b) for “discovery of the error” substitute “employer becomes aware of the inaccuracy”.

6. In regulation 67EA(5) (failure to make a return under regulation 67B or 67D)(d) at the end insert—

“But this paragraph does not apply to a return for the tax year 2014-15 or subsequent tax years.”.

Penalties

7. After regulation 67H (payments and recoveries)(e) insert—

“Penalties under Schedules 55 and 56 to the Finance Act 2009

Penalty for failure to make a return of real time information

67I.—(1) For the purposes of paragraph 6C of Schedule 55 to the Finance Act 2009 (amount of penalty: real time information for PAYE), an employer (P) who during a tax month fails to make a return on or before the filing date will be liable to a penalty of an amount calculated in accordance with paragraph (2).

(2) For the purposes of paragraph (1), the penalty, where the number of persons employed by P is—

-
- (a) S.I. 2003/2682, relevant amending instruments are S.I. 2005/2691, 2007/1077, 2007/2969, 2009/588, 2009/2029, 2010/668, 2011/1584, 2011/2496, 2012/822, 2012/1895, 2013/521 and 2013/2300.
- (b) Regulation 67D was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 21 of S.I. 2013/521.
- (c) Regulation 67E was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 22 of S.I. 2013/521.
- (d) Regulation 67EA was inserted by regulation 23 of S.I. 2013/521.
- (e) Regulation 67H was inserted by regulation 27 of S.I. 2012/822.

- (a) from 1 to 9, is £100,
- (b) from 10 to 49, is £200,
- (c) from 50 to 249, is £300, and
- (d) 250 or more, is £400.

Failure to make a return under regulation 67B or 67D: annual PAYE schemes

67J.—(1) Paragraph 6C(4) of Schedule 55 to the Finance Act 2009 does not apply for a tax year where an employer (P) operates an annual PAYE Scheme.

(2) For the purposes of this regulation P operates an annual PAYE Scheme for a tax year if for that year—

- (a) all P’s employees are paid annually,
- (b) all P’s employees are paid on the same date, and
- (c) P is only required under regulation 69 (due date and receipts for payment of tax)(a) to pay HMRC annually.

(3) Where P has made an election under regulation 98 (multiple PAYE Schemes) to be treated as different employers in relation to different groups of employees, for the purposes of this regulation P operates an annual PAYE scheme in relation to any group of employees if—

- (a) all the employees in that group are paid annually,
- (b) all the employees in that group are paid on the same date, and
- (c) P is only required under regulation 69 to pay HMRC annually in respect of that group of employees.

Duration of initial period for the purposes of paragraph 6C of Schedule 55 to the Finance Act 2009

67K. For the purposes of paragraph 6C(3) to (5) of Schedule 55 to the Finance Act 2009, the duration of the initial period is thirty days.

Circumstances in which payment of a lesser amount is to be treated as payment in full for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009

67L.—(1) For the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009 (amount of penalty: PAYE and CIS)(b) a payment of less than the full amount will be treated as payment of the full amount if the difference between the full amount and the amount paid is no more than £100 (“the tolerance”). This is subject to paragraphs (2) and (3).

(2) Paragraph (1) does not apply where—

- (a) the payment relates to a return which is correcting information given in a return filed in respect of a relevant payment made in an earlier tax month, and
- (b) the return is delivered after 19th April following the end of the tax year in question.

(3) If the total sum paid by the employer to HMRC for the tax period includes not only the amount due under regulation 67G as adjusted by regulation 67H(2), where appropriate, but also one or both of—

(a) Regulation 69 has been amended by regulation 13 of S.I. 2007/1077, regulation 30 of S.I. 2012/822 and by regulation 27 of S.I. 2013/521.
 (b) Paragraph 6(2) was substituted by paragraph 6 of Schedule 11 to the Finance (No. 3) Act 2010 (c. 33) and amended by paragraph 12(3) of Schedule 50 to the Finance Act 2013.

- (a) any earnings-related contributions (as defined by regulation 1(2) of the SSC Regulations 2001(a));
- (b) any payment under regulation 7(1) of the Income Tax (Construction Industry Scheme) Regulations 2005(b); or
- (c) any repayment due under the Student Loans Regulations(c),

the tolerance is applied to the total sum paid to HMRC for the tax period to which the payments relate.”.

8. In regulation 141(1) (direct collection and special arrangements) for sub-paragraph (b) to the end of the paragraph substitute—

“(b) any other case in which HMRC are of the opinion that deduction of tax by reference to the tax tables is impracticable

HMRC may make special arrangements for the collection of tax in respect of PAYE income of any employee, but where HMRC does not make such special arrangements, the direct collection procedure in regulations 142, 143, 144 and 147 will apply to that income, unless within 30 days beginning with the date of receipt of written notification from HMRC of the direct collection procedure the employee objects to that procedure.”.

9. For regulation 142 (direct collection: issue of deductions working sheet) substitute—

“Direct collection: employee to report payments

142.—(1) On receiving any relevant payment an employee must proceed in accordance with regulation 67B (real time returns of information about relevant payments)(d), regulation 67CA (notifications of relevant payments) and regulations 67E (returns under regulations 67B and 67D: amendments) to 67L (circumstances in which payment of lesser amount treated as payment in full)(e) as if—

- (a) the employee were the Real Time Information employer for the purposes of those regulations, and
- (b) references to making a relevant payment were references to receiving a relevant payment.

(2) If the employee is within regulation 67D(1)(a) or if HMRC has made a direction under regulation 67D(11) (exceptions to regulation 67B)(f) the employee may instead proceed in accordance with regulation 67D(3), (4) and (5) and regulations 67E (returns under regulations 67B and 67D: amendments) to 67L (circumstances in which payment of lesser amount treated as payment in full) as if—

- (a) the employee were the Real Time Information employer for the purposes of those regulations, and
- (b) references to making a relevant payment were references to receiving a relevant payment.”.

10. In regulation 143(5) (direct collection: employee to keep records) omit “and regulations 145 and 146”.

(a) S.I. 2001/1004. The term “SSC Regulations” and its definition were inserted by regulation 3 of S.I. 2007/1007.
 (b) S.I. 2005/2045.
 (c) S.I. 2009/470. The term “Student Loan Regulations” and its definition were inserted by regulation 3 of S.I. 2008/782 and substituted by regulation 60 of S.I. 2012/822.
 (d) Regulation 67B was inserted by regulation 27 of S.I. 2012/822 and amended by regulation 18 of S.I. 2013/521 and by regulation 2 of S.I. 2013/2300.
 (e) Regulation 67CA was inserted by regulation 2 of S.I. 2012/1895; regulations 67E, 67F, 67G and 67H were inserted by regulation 27 of S.I. 2012/822 and amended by regulations 24, 25 and 26 of S.I. 2013/521; and regulations 67I, 67J, 67K and 67L are inserted by regulation [7] of these Regulations.
 (f) Regulation 67D was inserted by regulation 27 of S.I. 2012/822 and has been amended by regulation 21 of S.I. 2013/521 and regulation x of these Regulations.

11. In regulation 144(1) (direct collection: payment) in paragraph (1) for the definition of “the current total tax” substitute—

““the current total tax” means either the amount shown under paragraph 17 of Schedule A1 (real time returns)(a) in the most recent return made in the tax year by the employee under regulation 67B or, where the employee makes a return under regulation 67EA(3) (failure to make a return under regulation 67B), the amount shown under paragraph 17 of Schedule A1 for the tax year to which that return relates.”.

12. Omit regulations 145 (direct collection: return when relevant payments cease) and 146 (direct collection: end of year return).

13. In regulation 206(2) (employers)(b) after sub-paragraph (e) insert—

“and;

(f) an employer to whom a direction has been given under regulation 67D(11)(c).”.

14. Omit regulation 207(2) (specified information).

PART 2

Amendment of the Income Tax (Construction Industry Scheme) Regulations 2005

15. Amend the Income Tax (Construction Industry Scheme) Regulations 2005 by inserting after regulation 16 (recovery of amount unpaid and interest)—

“**16A.**—(1) For the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009 (amounts of penalty: PAYE and CIS)(d) a payment of less than the full amount will be treated as payment of the full amount if the difference between the full amount and the amount paid is no more than £100 (“the tolerance”). This is subject to paragraph (2).

(2) If a contractor makes a payment under regulation 7(1) (payment, due date for payment of amounts deducted and receipts) and the total sum paid to Her Majesty’s Revenue and Customs for the tax period includes not only that payment but also one or more of—

- (a) any tax deducted under the PAYE Regulations(e),
- (b) any earnings-related contributions (as defined by regulation 1(2) of the Social Security (Contributions) Regulations 2001(f)), or
- (c) any repayment due under the Education (Student Loans) (Repayment) Regulations 2009(g) or under the Education (Student Loans) (Repayment) Regulations (Northern Ireland) 2009(h),

the tolerance is applied to the total sum paid to the Commissioners for Her Majesty’s Revenue and Customs for the tax period to which the payments relate.”.

ABC

DEG

Date

Two of the Commissioners for Her Majesty’s Revenue and Customs

-
- (a) Schedule A1 was inserted by regulation 52 of S.I. 2012/822 and amended by regulation 37 of S.I. 2013/521.
 - (b) Paragraph (2) has been substituted and amended by regulation 7 of S.I. 2009/2029 and amended by regulation 9 of S.I. 2010/668 and by regulation 10 of S.I. 2013/521.
 - (c) Paragraph (11) was inserted by regulation 21 of S.I. 2013/521.
 - (d) Paragraph 6(2) of Schedule 56 was substituted by paragraph 6 of Schedule 11 to the Finance (No. 3) Act 2010 and has been subsequently amended by paragraph 12(3) of Schedule 50 to the Finance Act 2013 (c. 29).
 - (e) The term “PAYE Regulations” is defined in regulation 2 as the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682).
 - (f) S.I. 2001/1004.
 - (g) S.I. 2009/470.
 - (h) S.R (NI) 2009 No 128.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (“the principal Regulations”) which make provision for the assessment, charge, collection and recovery of income tax in respect of all pay as you earn (“PAYE”) income. These Regulations also amend the Income Tax (Construction Industry Scheme) Regulations 2005 (S.I. 2005/2045) (“the CIS Regulations”) which make provision in relation to the construction industry scheme established by Chapter 3 of Part 3 of the Finance Act 2004 (c. 12).

Part 1 of these Regulations amends the principal Regulations.

Regulation 3 amends the definition of “deductions working sheet” to remove references to regulations which have been repealed. References to Her Majesty’s Revenue and Customs (“HMRC”) issuing a deductions working sheet are also removed. This is a consequential amendment following the substitution of regulation 142 of the principal Regulations by regulation 9 of these Regulations.

Regulation 4 makes two amendments to regulation 67D of the principal Regulations, which regulation allows certain employers (“paper filer employers”) to file on paper rather than using an approved method of electronic communications. Regulation 4(a) and (b) clarify that where a paper filer employer decides to file returns electronically, the employer will no longer be within regulation 67D. As a consequence the employer will not only be required to file returns electronically but will also be required to make returns on or before making a relevant payment to an employee. Regulation 4(c) amends regulation 67D so that paper filer employers are required to submit information within 14 days of the end of a tax quarter.

Regulation 5 makes minor amendments to regulation 67E of the principal Regulations to clarify that the regulation applies to both a careless inaccuracy and a deliberate inaccuracy in, or omission from, a return.

Regulation 6 ensures that regulation 67EA(5) of the principal Regulations only applies to a return for the tax year 2013-14. As a consequence of the introduction of in year late filing penalties (see regulation 7 below), employers will no longer be liable for a penalty under section 98A of the Taxes Management Act 1970 (c. 9) in relation to failures to make returns with a filing date on or after 6th April 2014.

Regulation 7 inserts new regulations 67I to 67L into the principal Regulations. New regulation 67I sets out the quantum of a penalty where an employer fails to file a return or files a return after the filing date. The quantum of the penalty is calculated by reference to the number of persons employed by the employer. New regulation 67J applies where the employer operates an annual PAYE Scheme and disapplies the first unpenalised default in a year set out in paragraph 6C(4) of Schedule 55 to the Finance Act 2009 (c. 10). As a consequence where the employer operates an annual PAYE scheme and the employer fails to make the return or it is made late, the employer will be liable to a late filing penalty. Regulation 67K provides that the initial period referred to in paragraph 6C(3) of Schedule 55 to the Finance Act 2009 is thirty days. As a consequence a new employer who does not file a return on or before making the relevant payment to an employee will not be liable to a late filing penalty if that return is made within 30 days of the date on which the employer made the first relevant payment or payments to the employees. New regulation 67L makes provision for a tolerance of £100 between the total of all the amounts that the employer is due to pay to HMRC for the tax month (or tax quarter if the employer pays to HMRC on a quarterly basis) and the paid over for that tax month (or tax quarter). As a consequence of this regulation, if the difference between the two sums is no more than £100 the employer will not be liable to a late payment penalty under Schedule 55 to the Finance Act 2009.

Regulations 8 to 12 of these Regulations amend regulations 141 to 146 of the principal Regulations, which make provision for the situation where it is not practicable for the employer to deduct tax by reference to the tax tables, for instance where the employer is not based in the United Kingdom. In such cases the principal Regulations permit HMRC to either make special arrangements with the employer or to require the employee to operate Pay As You Earn upon the

relevant payments received from the employer (the direct collection procedure). Where the employee objects to the direct collection procedure, the relevant payments must be returned under Self Assessment.

Regulation 8 makes a minor consequential amendment to regulation 141 to reflect that as a consequence to the move to real time information and electronic filing of information, HMRC will no longer be issuing deductions working sheets to employees who are required to operate the direct collection procedure.

Regulation 9 substitutes a new regulation 142 which requires an employee operating the direct collection procedure to comply with regulation 67B and regulations 67CA to 67L. As a consequence of this regulation, an employee to whom the direct collection procedure applies will be required to file a return upon receipt of the relevant payment notifying HMRC of that payment using an approved method of electronic communications.

Regulations 10 and 11 make minor consequential amendments to regulations 143 and 144 of the principal Regulations.

Regulation 12 revokes regulations 145 and 146 of the principal Regulations as the employee will now be reporting this information during the year as part of real time information.

Regulation 13 makes a consequential amendment to regulation 206 of the principal Regulations to ensure that paper filer employers are not required to file by an approved method of electronic communications.

Regulation 14 makes a consequential amendment to regulation 207 of the principal Regulations to require employees who use the direct collection procedure and employers with whom HMRC has agreed special arrangements under regulation 141 of the principal Regulations to file using an approved method of electronic communications.

Part 2 of these Regulations amends the CIS Regulations. Regulation 15 inserts new regulation 16A into the CIS Regulations which makes provision for a tolerance of £100 between the amount that the employer is due to pay to HMRC and the amount that the employer has paid for the tax month or tax quarter (depending on whether the employer is required to pay over the tax deducted on a monthly or a quarterly basis). As a consequence of this regulation, if the difference between the two sums is no more than £100 the employer will not be liable to a late payment penalty under Schedule 56 to the Finance Act 2009.

2014 No. XXXXX

SOCIAL SECURITY

**The Social Security (Contributions) (Amendment No. X)
Regulations 2014**

Made - - - - - ***
Laid before Parliament - - - - - ***
Coming into force - - - - - 6th April 2014

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 175(a) of, and paragraph 6(1) and (2) of Schedule 1 to, the Social Security Contributions and Benefits Act 1992(b) and by section 171(c) of, and paragraph 6(1) and (2) of Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992(d) and now exercisable by them(e).

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Social Security (Contributions) (Amendment No. X) Regulations 2014 and come into force on 6th April 2014.

(2) Regulations 7 and 8 have effect in relation to a failure to make a return which has a filing date after 5th April 2014.

Amendment of the Social Security (Contributions) Regulations 2001

2. The Social Security (Contributions) Regulations 2001(f) are amended as provided for in regulations 3 to 10.

3. In regulation 67A (penalty for failure to make payments on time: Class 1 contributions)(g) after "1999." insert—

-
- (a) 1992 c. 4. Section 175 has been amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c. 2).
- (b) Paragraph 6(1) and (2) was amended by paragraph 77 of Schedule 7 to the Social Security Act 1998 (c. 14). Paragraph 6(1) was amended by paragraph 35 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999, so that the power to be make regulations became exercisable by the Inland Revenue, and by paragraph 185 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1).
- (c) 1992 c. 7. Section 171 has been relevantly amended by S.I. 1993/1579, 1994/1898 and 1999/671.
- (d) Paragraph 6(1) and (2) was amended by paragraph 58(8) and (9) of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1056 (N.I. 10)). Paragraph 6(1) was amended by paragraph 34 of Schedule 3 to the Social Security (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671).
- (e) The functions of the Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, in so far as is appropriate in consequence of section 5, a reference, howsoever expressed, to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (f) S.I. 2001/1004: relevant amending instruments are S.I. 2004/770, 2010/721, 2012/821, 2013/622 and 2013/2301.
- (g) Regulation 67A was inserted by regulation 3 of S.I. 2010/721.

“(2) Regulation 67L of the PAYE Regulations (circumstances in which payment of a lesser amount is to be treated as payment in full for the purposes of paragraph 6(2) of Schedule 56 to the Finance Act 2009)(a) applies in relation to the late payment of Class 1 contributions as if—

- (a) the Class 1 contributions were an amount of tax falling within item 2 of the Table in paragraph 1 of that Schedule;
- (b) references to regulations 67G and 67H(2) were references to paragraphs 10 and 11 of Schedule 4 to these Regulations; and
- (c) references to earnings-related contributions were references to tax deducted under the PAYE Regulations.”,

and as a consequence regulation 67A becomes regulation 67A(1).

4. In paragraph 1(1) of Schedule 4 (interpretation) in the definition of “deductions working sheet” omit from “or the form” to the end of the definition.

5. In paragraph 21D of Schedule 4 (exceptions to paragraph 21A)(b)—

- (a) at the end of sub-paragraph (1) insert—
“But this is subject to sub-paragraph (2B).”;
- (b) after sub-paragraph (2A) insert—
“(2B) This paragraph does not apply if a Real Time Information employer within sub-paragraph (1) makes a return using an approved method of electronic communications.”; and
- (c) in sub-paragraphs (3), (5) and (6) for “month”, wherever it occurs, substitute “quarter”.

6. In paragraph 21E of Schedule 4 (returns under paragraphs 21A and 21D: amendments)(c)—

- (a) in sub-paragraph (1) for “an employer discovers an error in a return” substitute “there is an inaccuracy in a return, whether careless or deliberate.”;
- (b) in sub-paragraphs (2), (3) and (4) for “error” substitute “inaccuracy”;
- (c) for sub-paragraph (5) substitute—
“(5) When the employer becomes aware of an inaccuracy in a return under paragraph 21A or 21D, the employer must provide the correct information in the next return for the tax year in question.”; and
- (d) in sub-paragraph (7)(b) for “discovery of the error” substitute “employer becomes aware of the inaccuracy”.

7. In paragraph 21EA of Schedule 4 (failure to make a return under paragraph 21A or 21D)(d) in sub-paragraph (6) at the end insert—

“But this sub-paragraph does not apply to a return for the tax year 2014-15 or subsequent tax years.”.

8. After paragraph 21F of Schedule 4 (additional information about payments)(e) insert—

“Penalties for failure to make a return of real time information

21G.—(1) Schedule 55 to the Finance Act 2009 (“Schedule 55 FA 2009”) (penalty for failure to make returns etc.)(f) and regulations 67I to 67K of the PAYE Regulations

(a) Regulation 67L was inserted into the PAYE Regulations by regulation [7] of S.I. 2014/xxx.
(b) Paragraph 21D was inserted by regulation 11 of S.I. 2012/821 and amended by regulation 14 of S.I. 2013/622.
(c) Paragraph 21E was inserted by regulation 11 of S.I. 2012/821 and amended by regulation 15 of S.I. 2013/622.
(d) Paragraph 21EA was inserted by regulation 16 of S.I. 2013/622.
(e) Paragraph 21F was inserted by regulation 11 of S.I. 2012/821 and amended by regulation 17 of S.I. 2013/622.
(f) 2009 c. 10. Schedule 55 has been relevantly amended by paragraphs 3 to 6 of Schedule 50 to the Finance Act 2013 (c. 29).

(penalties for failure to make a return)(a) apply in relation to a failure to make a return of information by the filing date in respect of Class 1 contributions as if—

(a) Class 1 contributions were an amount of tax falling within item 4 of the Table in paragraph 1 of Schedule 55 FA 2009, and

(b) references to the PAYE Regulations were references to these Regulations, but this is subject to sub-paragraph (2).

(2) Where a person (P) is liable to a penalty in consequence of a failure to make a return under regulation 67B (real time returns of information about relevant payments) or 67D (exceptions to regulation 67B) of the PAYE Regulations (“the tax return”)(b) by the filing date, P shall not also be liable to a penalty under that paragraph in respect of any failure in respect of an associated return made under paragraph 21A (real time returns of information about payments of general earnings)(c) or 21D (exceptions to paragraph 21A).

(3) A tax return and a return under paragraph 21A or 21D are “associated” if the return under paragraph 21A or 21D is required to be made at the same time as the tax return.”.

9. In paragraph 30A of Schedule 4 (application of paragraphs 31 and 31A)(d) for “(7)” substitute “(6)”.

10. In paragraph 31 of Schedule 4 (direct collection involving deductions working sheets)(e)—

(a) in sub-paragraph (1) omit the text from the “HMRC may” to “30A.”;

(b) in sub-paragraph (2)—

(i) omit from “to whom” to “sub-paragraph (1)”;

(ii) for “that working sheet” which occurs immediately before “his name” substitute “a working sheet”; and

(iii) for “the year for which the deductions working sheet was issued” substitute “that tax year”;

(c) at the end of sub-paragraph (7) insert—

“But this sub-paragraph does not apply to a return for the tax year 2014-15 or subsequent tax years.”; and

(d) at the end of sub-paragraph (8) insert—

“But this sub-paragraph does not apply to a return for the tax year 2014-15 or subsequent tax years.”.

ABC

DEG

22nd November 2013

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulations 2 to 10 amend the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) (“the principal Regulations”).

-
- (a) The term “PAYE Regulations” is defined in regulation 1(2) and was inserted by regulation 3 of S.I. 2004/770. Regulations 67I to 67K are inserted into the PAYE Regulations by regulation xx of S.I. 2014/xxxx.
- (b) Regulations 67B and 67D were inserted into the PAYE Regulations by regulation 27 of S.I. 2012/822 and have been amended by regulations 18 and 21 of S.I. 2013/521. Regulation 67B has been amended by regulation 2 of S.I. 2013/2300 [and by regulation x of S.I. 2014/xxx]. Regulation 67D has been amended by regulation [x of S.I. 2014/xxx.]
- (c) Paragraph 21A was inserted by regulation 11 of S.I. 2012/821 and has been amended by regulation 10 of S.I. 2013/622 and regulation 3 of S.I. 2013/2301.
- (d) Paragraph 30A was inserted by regulation 20 of S.I. 2013/622.
- (e) Paragraph 31 has been amended by regulation 33 of S.I. 2004/770, regulation 8 of S.I. 2007/1056 and by regulation 21 of S.I. 2013/622.

Where an employer fails to make payment of the earnings-related contributions due by the statutory date, the employer may be liable to a late payment penalty under Schedule 56 to the Finance Act 2009 (c. 10). Regulation 3 amends regulation 67A of the principal Regulations to provide that where there is a difference between the amount due and the sum paid over in respect of all sums due to Her Majesty's Revenue and Customs (HMRC) for the tax period but that amount is no more than £100, the employer will not be liable to a late payment penalty.

Regulation 4 amends the definition of "deductions working sheet" in paragraph 1 of Schedule 4 to the principal Regulations to reflect that HMRC will no longer be issuing deductions working sheets to employers who are required to file using an approved method of electronic communications.

Regulation 5 makes two amendments to paragraph 21D of Schedule 4 to the principal Regulations. This paragraph allows certain employers ("paper filer employers") to file on paper rather than using an approved method of electronic communications. Regulation 5(a) and (b) amends paragraph 21D to clarify that, where a paper filer employer decides to file returns electronically, that employer will no longer be within paragraph 21D. As a consequence the employer will not only be required to file returns electronically but will also be required to make returns on or before making a relevant payment to an employee. Regulation 5(c) amends paragraph 21D so that paper filer employers are required to submit information within 14 days after the end of a tax quarter.

Regulation 6 makes minor amendments to paragraph 21E of Schedule 4 to the principal Regulations to clarify that the paragraph applies to both a careless or a deliberate inaccuracy in, or omission from, a return.

Regulation 7 ensures that paragraph 21EA(6) of Schedule 4 to the principal Regulations only applies to a return for the tax year 2013-14. As a consequence of the introduction of in year late filing penalties in Schedule 55 to the Finance Act 2009 (c. 10) employers will no longer be liable for a penalty under section 98A Taxes Management Act 1970 (c. 9) in relation to failures to make returns which have a filing date on or after 6th April 2014.

Regulation 8 inserts new paragraph 21G into Schedule 4 to the principal Regulations to make provision for penalties where an employer fails to make a return of information by the filing date in paragraph 21A or paragraph 21D (as appropriate).

Regulation 9 makes a minor amendment to paragraph 30A of Schedule 4 to the principal Regulations so that where an employee is responsible for direct collection and payment of earnings-related contributions (a "direct collection employee"), that employee may be liable to a penalty under section 98A of Taxes Management Act 1970 if the final return for the tax year 2013-14 is received after the filing date of 19th May 2014. This ensures that the direct collection employee is in the same position as all employers for the tax year 2013-14, and is liable for a late filing penalty only if the final return of the year is received after 19th May 2014.

Regulation 10 amends paragraph 31 of Schedule 4 to the principal Regulations to reflect that HMRC will no longer be issuing deductions working sheets to employers or to direct collection employees.

[TIIN]